

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	CASE NO. 1:19CR174
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
CODY DAVID SWINNERTON,)	
)	
Defendant.)	ORDER [Resolving ECF No. 20]

Defendant Cody David Swinnerton moves the Court to suppress evidence seized from his home. [ECF No. 20](#). Although the search and seizure was supported by a warrant, Defendant argues that the warrant was invalid because the affidavit supporting it was insufficient on its face and it could not possibly have supported a finding of probable cause. The Government opposes the motion, and Defendant has replied. ECF Nos. [29](#), [30](#). For the reasons given below, the motion is denied.

I. Background

Between October 16 and October 26, 2018, the Ohio Internet Crimes Against Children Task Force received eight “CyberTips” from the National Center for Missing and Exploited Children from Facebook and Instagram. [ECF No. 20-1 at PageID#: 119](#). Cuyahoga County Sheriff’s Office Special Investigator Justin Rotili, a law enforcement officer of more than 11 years, learned of those tips and investigated them. [Id. at PageID#: 117-24](#). The investigation revealed a common thread: All eight tips appeared to be associated with Facebook or Instagram accounts controlled by 19-year-old male Cody Swinnerton. [Id. at PageID#: 119-123](#), especially §

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I, ¶¶ 2-4, 8-9, 11-12. Special Investigator Rotili also learned Cody Swinnerton's Berea, Ohio, address, and discovered that the IP address associated with that location had previously been "associated with an image of possible child pornography uploaded to Instagram" several months earlier. [Id. at PageID#: 123](#). He also communicated with law enforcement officers in other jurisdictions about his suspicions and identified possible child victims in Tennessee, Iowa, Texas, Austria, Australia, and France, all linked to Cody Swinnerton. [Id. at PageID#: 122](#).

Special Investigator Rotili personally appeared before Cuyahoga County Common Pleas Judge Brendan Sheehan on January 24, 2019, requesting a warrant to search Defendant's home and seize certain items if they were uncovered. [ECF No. 20-1](#). He supported that request with an affidavit in which he attested, based on his "training and experience," that

persons trading in, receiving, distributing, or possessing images and/or videos involving the exploitation of children or those interested in the actual exploitation of children often save the images and/or videos that they are able to collect from their use of the Internet and covet them as prized possessions. These items of contraband are often saved to the individual's computer or other electronic devices so that they may be viewed repeatedly by the offender. In cases of this nature, the offender rarely disposes of the contraband and maintains possession of it.

[Id. at PageID#: 123-24](#). Special Investigator Rotili also attested that such persons "often save the images and/or videos," and "[t]hese items of contraband are often saved to the individual's computer" [Id. at PageID#: 125](#). He also explained that such persons often store such contraband "typically in his or her own home" on a "computer or other digital storage media" and/or "in desks, safes, or other storage containers." [Id. at PageID#: 125-26](#).

Judge Sheehan, satisfied that there was probable cause to believe evidence of a crime could be found at Swinnerton's residence, issued a search warrant for that location. [ECF No. 20-](#)

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1. Federal agents executed the search warrant on January 25, 2019, and a criminal complaint was filed against Defendant on February 7, 2019. [ECF No. 1](#). He was later indicted, [ECF No. 8](#), and he now moves the Court to suppress the evidence uncovered during the January 25, 2019, search. [ECF No. 20](#).

II. Analysis

Defendant urges that the January 24, 2019, search warrant was invalid and that the ensuing search and seizure was unconstitutional. He advances two rationales in support of his motion. First, he argues, the search warrant affidavit failed to establish a nexus between the suspected criminal activity and the property that was searched. Second, he posits that the affidavit could not give rise to probable cause because it relied on stale information.

“Probable cause is defined as reasonable grounds for belief, supported by less than *prima facie* proof but more than mere suspicion.” [United States v. Abernathy](#), 843 F.3d 243, 249 (6th Cir. 2016) (quoting [United States v. King](#), 227 F.3d 732, 739 (6th Cir. 2000)). “In assessing whether a warrant to search a residence passes muster under the Fourth Amendment, the ‘critical element is that there is reasonable cause to believe that the specific “things” to be searched for and seized are located on the property to which entry is sought.’” *Id.* (quoting [Zurcher v. Stanford Daily](#), 436 U.S. 547, 556 (1978)) (alterations omitted).

Both of Defendant’s arguments fail for the same reason: Special Investigator Rotili attested, based on training and experience, that the kind of contraband he suspected Defendant of possessing is usually kept in one’s home and not disposed of. See [ECF No. 20-1 at PageID#: 123-26](#), especially § I, ¶¶ 17-18, § II, ¶¶ 4, 10. The nature of the suspected crime (possession of

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child pornography) is such that it often takes place at home, and evidence of its occurrence often persists at the offender's home.

Defendant posits that a search warrant affidavit must describe a link between the suspected crime and the location to be searched; it is not enough "that the owner of [the] property is suspected of [a] crime." [ECF No. 20 at PageID#: 111](#) (citing [United States v. McPhearson](#), [469 F.3d 518, 524 \(6th Cir. 2006\)](#)). That rule is correct, and it is met easily in this case. Special Investigator Rotili expressly attested that the contraband photos and/or videos "are often saved to the individual's computer or other digital storage media so that they may be viewed repeatedly by the offender. In cases of this nature, the offender rarely disposes of the contraband and maintains possession of it, typically in his or her own home" [ECF No. 20-1 at PageID#: 125-26](#). Defendant does not challenge Special Investigator Rotili's qualifications or question the basis for his stated knowledge, nor does he dispute the accuracy of Special Investigator Rotili's attestations. He merely asserts, incorrectly, that the search warrant affidavit provides no basis to believe that incriminating evidence might be found at Defendant's residence.¹

Defendant's second rationale is defeated by the same attestations. Special Investigator Rotili swore, based on training and experience, that persons who possess and traffic in child pornography "often save the images" on a "computer or other digital storage media so that they may be viewed repeatedly by the offender." [ECF No. 20-1 at PageID#: 125](#). Such individuals "covet" the contraband "as prized possessions," and offenders "rarely dispose[] of the

¹ Whether Defendant is a frequent traveler has no bearing on the likelihood that he possesses contraband at home.

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contraband and maintain[] possession of it.” [Id. at PageID#: 123-24](#). Special Investigator Rotili learned of eight tips in October 2018, conducted further investigation in the ensuing weeks and months, and requested and received a search warrant on January 24, 2019. [Id. at PageID#: 119-24](#). The information discussed in his affidavit was not stale.

In his reply brief, Defendant raises a new argument, suggesting that the evidence described in the search warrant affidavit was itself improbable. *See* [ECF No. 30](#). More specifically, he argues that it was unfair and illogical to associate an observation of likely child pornography upload in June 2018 with Defendant, given that the affidavit also errantly stated that internet service had not been activated at Defendant’s home until September 2018.² Because Defendant did not raise this argument in the initial motion, it is waived. Regardless, the errant internet-service activation date does little, if anything, to make Special Investigator Rotili’s affidavit any less compelling. Likely child pornography was observed from an IP address associated with the home where all agree Defendant lived at the time the observation was made. [ECF No. 20-1 at PageID#: 123](#). Additionally, suspicions about Defendant’s behavior on platforms like Facebook and Instagram, credible on their own terms, have nothing to do with the date of internet service activation at Defendant’s home. [Id. at PageID#: 119-23](#).

Finally, even if the January 24, 2019, warrant were not supported by probable cause, Defendant’s motion would be denied. Defendant does not allege that the federal agents who

² In fact, internet service at Defendant’s home was activated on July 1, 2013, and it was maintained since that time. [ECF No. 30 at PageID#: 178](#). But the affidavit provided to Judge Sheehan mistakenly indicated the September 2018 date. [ECF No. 20-1 at PageID#: 123](#).

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searched his home relied on the warrant recklessly or in bad faith. See [United States v. Leon, 468 U.S. 897 \(1984\)](#).

III. Conclusion

For the reasons stated herein, Defendant's motion to suppress ([ECF No. 20](#)) is denied.

IT IS SO ORDERED.

June 10, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge